IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3282 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VELJI BHADABHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3282 of 2002

MR ANIL DAVE for MR SUNIL C PATEL for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/06/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Rajkot City,

dated 24.1.2002 in exercise of powers vested in him by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as dangerous person under the PASA Act. The papers produced along with the petition includes the entire set of the papers served to the detenu by the detaining authority along with the grounds of detention. It reveals that total three criminal offences were registered in Rajkot Taluka Police Station. The first offence has been registered on 3.5.2001 for the offence punishable under sec. 323, 504, 50692), 427, 188 and 114 of IPC. The alleged incident has occured on 2.5.2001 and the complaint was lodged at 0.25 hours with the police station. Plain reading of the FIR reveals that the alleged incient has occured because of the quarrel between the two groups of the community i.e. Koli community. The second offence was registered at 00.5 minutes i.e. immediately after mid-night. The third incident was registered on 16.1.2002 for the offence punishable under sec. 323, 324 and 504 of IPC. That incident has also occured at about 21.00 hous and the comlaint was lodged on the next day after-noon at about 12.30 hours. According to the detaining authority, the petitioner was found involved in two other unregistered offence and these two alleged incidents have occured on 29.9.2001 and 17.11.2001 respectively. Considering the contents of the statements recorded by the sponsoring authority and their verification, it transpires that if the incidents are accepted as correct narration of the events, than also they were offence punishable under sec. 323 of IPC etc.

The learned counsel for the petitioner Mr.Anil Dave has taken me through the number of grounds assailing the validity of the order of detention, however, he has concentrated mainly on one ground and has submitted that the detaining authority has wrongly inferred to the effect that the activity of the petitioner-detenu is adverse to the public order or likely to affect the public order. It is also one of the ground that because of the local politics and some enimical terms with the community people, he has been victimised. Without going into the merits of this submission as to whether this is a case of political victimisation, it can be legitimately inferred that the allegect act of the petitioner cannot be said to be an activity of dagerous to the public order. He has been wrongly branded as 'dangerous person' in view of the ratio of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police

Commissioner, Surat & Ors., reported in 2000(1) G.L.H., p. 393. In the cited decision, the accused was found involved in the offence punishable under sec. 324 of IPC. Considering the total period of the alleged activity of the detenu, it is between May 2001 and January, 2002 and most of the incidents have occured in the later part of the day or late evening or early part of the night hours. Normally, this period in the village area the people are mostly free, so some incident or quarrel between two or say two group should not be viewed very seriously. So, the detaining authority was supposed to scrutinise the facts in detail and unless he is able to reach to a conclusion that really the person is required to be detained being 'dangerous person', one should not be branded as a 'dangerous person'. The sponsoring authority is supposed to disclose the general back ground, charachter, antecidents, criminal tendency and other aspects of the detenu to the detaining authority and the subjective satisfaction has to be record on all these details. The order of detention requires to be quashed solely on this ground only. It is not necessary to discuss other grounds agitated before this Court.

In the result, this petition is allowed. The impugned order of detention dated 24.1.2002 passed by Police Commissioner, Rajkot city, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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